

08 CV 4464

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

X 08 CIV

DIAGEO NORTH AMERICA, INC.,

Plaintiff,

-against-

**COMPLAINT**

M/V "TORONTO EXPRESS", her engines, boilers, etc.  
and ORIENT OVERSEAS CONTAINER LINE LIMITED,

08 CIV

Defendant.

X

Plaintiff, by its attorneys, McDERMOTT & RADZIK, LLP., as and for its Complaint herein, alleges, upon information and belief, as follows:

**FIRST:** All and singular the following premises are true and constitute an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

**SECOND:** At and during all the times hereinafter mentioned, plaintiff has and now has the legal status and principal office and place of business stated in Schedule A, hereto annexed and by this reference made a part hereof.

**THIRD:** At and during all the times hereinafter mentioned, defendant had and now has the legal status and office and place of business stated in Schedule A and was and now is engaged in business as a common carrier of merchandise by water for hire, and owned, operated, managed, chartered and/or otherwise controlled the vessel above named as a common carrier of merchandise by water for hire.

**FOURTH:** At and during all the times hereinafter mentioned, the said vessel was and now is a general ship employed in the common carriage of merchandisc by water for hire and now is or will be during the pendency of this action, within this District and within the jurisdiction of this Honorable Court.

**FIFTH:** On or about the date and at the port of shipment stated in Schedule A, there was shipped by the shipper therein named and delivered to defendant and the said vesscl, as common carriers, the shipment described in Schedule A then being in good condition and defendant and the said vessel then and there accepted said shipment so shipped and delivered to them and in consideration of certain agreed frigkeit charges thereupon paid or agreed to be paid, agreed to transport and carry the said shipment to the port of destination stated in Schedulc A and there deliver the same in like good order and condition as when shipped, delivered to and received by them, to the consignee named in Schedule A.

**SIXTH:** Thereafter, the said vessel arrived at the port of destination, where it and defendant made delivery of the shipment, but not in like good order and condition as when shipped, delivered to and received by them, but on the contrary, seriously injured and impaired in value by reason of the matter and things stated in Schedule A, all in violation of defendant's and the said vessel's obligation and duties as common carriers of merchandise by water for hire.

**SEVENTH:** Plaintiff was the shipper, consignee or owner of the shipment described in Schedule A and brings this action on its own behalf and as agent or trustee on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear and plaintiff is entitled to maintain this action.

**EIGHTH:** By reason of the premises, plaintiff has sustained damages, as nearly as the same can now be estimated, no part of which has been paid although duly demanded, in the sum of \$36,221.92.

**WHEREFORE**, plaintiff prays:

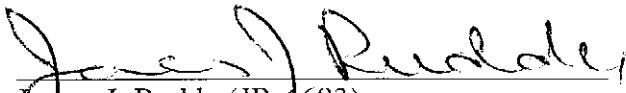
1. That process in due form of law may issue against defendant citing it to appear and answer all and singular the matters aforesaid;
2. That if defendant cannot be found within this District, then all its property within this District as shall be described in Schedule A, be attached in the amount of \$36,221.92, with interest thereon and costs, the sum sued for in this Complaint;
3. That judgment may be entered in favor of plaintiff against defendant for the amount of plaintiff's damages, together with interest and costs and the disbursements of this action;
4. That process in due form of law according to the practice of this Court in causes of admiralty and maritime claims, may issue against said vessel, her engines, etc., and that all persons having or claiming any interest therein be cited to appear and answer under oath, all and singular the matters aforesaid, and that this Court will be pleased to pronounce judgment in favor of plaintiff for its damages as aforesaid, with interest, costs and disbursements and that the said vessel may be condemned and sold to pay therefor; and

5. That this Court will grant to plaintiff such other and further relief as may be just and proper.

Dated: New York, New York  
May 12, 2008

McDERMOTT & RADZIK, LLP.  
Attorneys for Plaintiff

By:



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New York, New York 10005  
212-376-6400  
File No.: 10-07-2001 JJR

**SCHEDULE****Plaintiff's legal status and place of business:**

Plaintiff, Diageo North America, Inc., is a corporation or other business entity duly organized and existing under and by virtue of the laws of one of the States of the United States, with an office and place of business at 801 Main Avenue, Norwalk, Connecticut

**Defendant's legal status and place of business:**

Defendant, Orient Overseas Container Line Limited, is a foreign corporation or other business entity duly organized and existing under and by virtue of the laws of one of the States of the United States, or foreign sovereign, with an office and place of business at 88 Pine Street, New York, New York 10005

<i>Name of Vessel</i>	:	TORONTO EXPRESS
<i>Place of Receipt</i>	:	Grangemouth
<i>Port of Loading</i>	:	Antwerp
<i>Port of Discharge</i>	:	Montreal
<i>Place of Delivery</i>	:	St. Louis
<i>Bill of Lading Number</i>	:	OOLU3002859460
<i>Dated</i>	:	March 21, 2007
<i>Shipment</i>	:	1,229 cases of Whiskey
<i>Shipper</i>	:	Diageo Brands BV
<i>Consignee</i>	:	Greazers Midwest
<i>Nature of Claim</i>	:	Damage and Loss
<i>Amount</i>	:	\$36,221.92
<i>OOCL File</i>	:	TRX121W-02/SR
<i>Our File</i>	:	10-07-2001 JJR